House Bills 4518, 4594-96: Juvenile Life Without Parole
House Judiciary Committee,
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Testimony of Citizens Alliance on Prisons & Public Spending
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CAPPS strongly supports the elimination of life without parole sentences for any teenager. However, we recognize that changing sentencing rules for the future and providing retroactive relief to those already sentenced to non-parolable life when they were juveniles present different considerations. Therefore we will state our views on these issues separately.

HB 4594 -- Sentencing. CAPPS would prefer to prohibit the sentencing of any teenager to life without parole. Such a sentence rests on two assumptions we believe not to be viable: 1) that juveniles are as culpable as adults and should be equally eligible to receive the state's harshest punishment and 2) that a teenager may reasonably be found to be so irredeemable that foreclosing the possibility of parole for the rest of his or her life is justifiable. Reliance on these assumptions not only yields unfair results in individual cases, it requires taxpayers to pay for decades of incarceration in hundreds of cases that provide no increase in public safety. However, changing the sentence from mandatory to permissive is a significant step forward. It at least presents the possibility that some teenagers will not receive non-parolable life sentences in the future.

The problem then becomes how judicial discretion is to be exercised. The bill contains no broad standards for judges to follow and no specific criteria they must consider. Totally unfettered discretion will lead to arbitrary results. Disparity will occur within and across circuit benches and possibly along racial or gender lines. Whether a teenager receives life without the possibility of parole should depend on objective factors about the child and the crime, not the identity of the judge. Moreover, as a sentencing decision, the judge's exercise of discretion will be subject to appellate review. If the legislature provides guidelines, the appellate courts need only determine whether sentencing judges have applied them correctly.

In the past, criteria existed for determining whether a juvenile should even be tried as an adult. These included such factors as the child's age and maturity, prior juvenile record, degree of participation in the offense, the circumstances of the crime, the juvenile's apparent susceptibility to rehabilitation and the adequacy of available punishments (such as life with the *possibility* of parole). Now that waiver for all the most serious crimes is automatic, these factors can only be considered at sentencing. If the sentence is mandatory, they don't get considered at all. If the sentence is to become discretionary, CAPPS recommends that HB 4594 be amended to include uniform criteria that a judge must consider in deciding whether to impose a non-parolable life sentences on a teenager.

HB 4596 - Parole consideration. For those teenagers serving life without parole, either because they were sentenced before the adoption of HB 4594 or because a judge exercised the discretion to impose that sentence, HB 4596 would allow for the possibility of parole under the most limited circumstances. The prosecutor would have to file a petition "authorizing" the parole board to consider release and that petition would have to be supported by the victim's family and the sentencing court. CAPPS does not support HB 4596.

In our adversary system, the prosecutor has an enormous impact on the length of the sentence by deciding what crime to charge and whether to negotiate a plea. However, the actual sentencing decision belongs to the judge and the decision whether to grant parole belongs to the parole board. As a party, the prosecutor can attempt to influence these decision-makers. However, it creates a blatant conflict of interest to allow the prosecution to control these decisions. The notion of having the prosecutor "authorize" the parole board to act is no more appropriate than it would be to have the prosecutor "authorize" the judge to give a particular sentence. Blurring the lines between the functions of the parties stands the criminal justice system on its head and sets a dangerous precedent.

It is true that judges can prevent the release of parolable lifers by filing an objection. The rationale for allowing this judicial override of parole board discretion is that the life sentence was imposed by the court and determining the time to be served is effectively a function shared by the court and the board. However, this rationale does not extend to the prosecution.

Moreover the judicial capacity to prevent the release of a parolable lifer demonstrates why the extraordinary scheme envisioned by HB 4596 is unnecessary. If non-parolable life sentences imposed on teenagers are simply made parolable, all the constraints applicable to release decisions about parolable lifers would apply. The sentencing court would have the chance to object; the prosecutor and victim's family would have ample opportunity for input; a public hearing would be conducted in which the Attorney General's office would participate. The prosecutor or the victim could appeal a grant of parole to the courts. Permitting the prosecutor to prevent <u>any</u> parole consideration of someone sentenced to non-parolable life as a teenager is wholly unnecessary for public safety.

The legislature has experience changing a mandatory life sentence without parole to one that carries parole eligibility. When the drug laws were changed so that 650 drug lifers became parole-eligible, the prosecutors were not given any extra control. Once they had served enough time, the drug lifers were treated like any other parolable lifer. There is no reason not to follow the same pattern in changing the mandatory sentencing of juveniles.

As a practical matter, HB 4596 will provide virtually no relief to people sentenced before HB 4594 takes effect. In those cases, it was the prosecution that effectively decided to put this teenager away for life without parole in the first place by pursuing a charge that mandated that sentence. Even a judge who might have chosen to impose parolable life had no option under the law. It is unlikely that prosecutors will suddenly become prisoner advocates. To make matters worse, if the option for prosecutors to "authorize" parole exists and they don't use it, governors may become even more loath than usual to grant commutations.

We thank the Committee members for considering these views.